IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 648 of 2000

in

SPECIAL CIVIL APPLICATIONNo 1146 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI PRATABSINH GADHVI

Versus

GUJARAT AGRICULTURAL UNIVERSITY

Appearance:

1. LETTERS PATENT APPEAL No. 648 of 2000

MR RAMNARAIN RAI for Appellant No. 1

MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 18/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The order passed by the learned Single Judge dated 29.6.2000 in Special Civil Application No.1146 of 2000 has been challenged in this appeal. Learned Advocate Mr R N Rai has appeared for the appellant whereas Mr D G Chauhan, learned Advocate has appeared for the respondent-employer.

2. The facts giving rise to the present litigation in a nutshell are as under:

The appellant was working as a daily wager watchman in the Guest House maintained by the respondent University at Ahmedabad. The said Guest House was to be temporarily closed and therefore service of the appellant was to be terminated but on humanitarian grounds, the respondent-employer decided not to terminate the service of the appellant and he was transferred to Dantiwada as a daily wager Peon by an order dated 5.1.1991. It is not in dispute that the appellant did not resume his duty at Dantiwada.

3. The appellant treated the order dated 5.1.1991 as an order of termination and he was also aggrieved by the said order because by virtue of the said order, his wages had been reduced. He raised a dispute and the dispute was referred to the Labour Court, Ahmedabad, in pursuance of the proceedings initiated under the provisions of the Industrial Disputes Act, 1947. By an award dated 29.5.1999, the respondent was directed to reinstate the appellant without backwages but with continuity of service. The said award was challenged by the respondent employer by filing Special Civil Application No.1146/2000. After hearing the learned Advocates appearing for the parties, by order dated 29.6.2000, the Special Civil Application was allowed. The learned Single Judge came to the conclusion that service of the appellant had never been terminated and, therefore, the award with regard to reinstatement was not required to be passed by the Labour Court.

4. Being aggrieved by the order passed by the learned Single Judge, this appeal has been filed by the appellant-workman.

5. Learned Advocate Mr R N Rai has submitted that in fact the appellant was not transferred but his service

had been terminated. He has made allegations to the effect that so as to accommodate somebody, the appellant was transferred to a different place. He has, therefore, submitted that he should be reinstated in service with backwages.

6. On the other hand, learned Advocate Mr D G Chauhan appearing for the employer has submitted that the allegations levelled by the appellant workman have not been proved and in fact the service of the workman had never been terminated. He has submitted in pursuance of the instructions received by him that as the service of the appellant had never been terminated, the appellant would be reinstated as a daily wager Peon/Chowkidar at Dantiwada. He has also submitted that the appellant workman should report for duty within one week from today and he should report to the Registrar of the respondent University.

7. Looking to the above referred statement made by the learned Advocate for the respondent, in our opinion, this appeal would not survive for the reason that the appellant would be continued in service. It is clarified that the appellant shall not be entitled to backwages but he will be reinstated with continuity of service. As he has not performed his duties after he was transferred to Dantivada in pursuance of the order dated 5.1.1991, the period of his absence shall not be taken into account for any other purpose.

In view of the above facts, this appeal stands disposed of as dismissed with no order as to costs.

18.10.2001 [A R Dave, J.]

[D P Buch, J.]
msp